

<sup>2</sup> See *In the Matter of Lockheed Martin Corp., COMSAT Corp. and COMSAT Digital Teleport, Inc. Assignors, and Intelsat Ltd., Intelsat (Bermuda) Ltd., Intelsat LLC, and Intelsat USA License Corp., Assignees Application for Assignment of Earth Station and Wireless Licenses and Section 214 Authorizations and Petition for Declaratory Ruling, Order and Authorization*, DA 02-2254, IB Docket No **02-87 (IB + WTB, rel. Oct. \_\_, 2002)** (“Assignment Order”).

States under the Communications Satellite Act of 1962 ("1962 Satellite Act").<sup>7</sup> The 1962 Satellite Act declared it U.S. policy to join with other countries to create a commercial, global communications satellite system that would provide services on a non-discriminatory basis. As one of the first commercial satellite service providers, INTELSAT benefited from U.S. taxpayer-funded research and development carried out during the early days of space communications.<sup>4</sup> It also benefited from Commission policies intended to assure its early commercial success so that the broader public policy goals intended through its creation would be satisfied.<sup>5</sup> The 1962 Satellite Act also determined that United States participation in INTELSAT would be through a private company, later known as Comsat. Comsat, as the sole U.S. Signatory to INTELSAT, was the only company that could provide INTELSAT services in the United States.

3. Subsequently, the United States and other countries introduced competition into the satellite Communications market by authorizing private and government-owned separate satellite systems.<sup>6</sup> Over the years, competition developed globally from both the private and government-owned satellite systems and from fiber optic submarine cable systems.<sup>7</sup> By the late 1990s, the development of competitive markets for INTELSAT's services made the INTELSAT model of an intergovernmental organization outdated and inefficient. As a result, there was pressure by many of the governments and companies involved with INTELSAT to restructure as a private commercial entity.<sup>8</sup> In the United States, the Commission released its *Direct Access Order*,<sup>9</sup> permitting users to bypass Comsat and contract directly with Intelsat for available capacity. Soon thereafter, Congress passed the ORBIT Act.<sup>10</sup>

4. The stated purpose of the ORBIT Act, among other things, is to "promote a fully competitive global market for satellite communication services. . . by fully privatizing. . . INTELSAT."<sup>11</sup> Section 641(a) of the ORBIT Act codified the Commission's *Direct Access Order*.<sup>12</sup> Section 641(b) of the ORBIT Act required the Commission to go one step further and determine whether, even with direct access, there was sufficient capacity available for those who wanted to purchase INTELSAT services. As Congress was well aware, the long history Comsat had as the sole provider for INTELSAT services and the complex tariff arrangements developed over the years by the INTELSAT Signatories (including Comsat) resulted in a situation where it was possible that, despite allowing direct access, Comsat might maintain effective control of access to INTELSAT from the U.S. market. Specifically, Section 641(b) of

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Communications Satellite Act of 1962, as amended, 47 U.S.C. §§ 701 (a) and (b).

See *Comsat Study*, 77 FCC 2d 564, 582-599 (1980)

<sup>5</sup> See *Policy for the Distribution of United States International Carrier Circuits Among Available Facilities during the Post-1988 Period*, 3 FCC Rcd 21 56 (1988) ("*Circuit Distribution Decision*").

<sup>6</sup> See *Separate Satellite Systems decision*, 101 FCC 2d 1046 (1985), imposing restrictions on coverage of Public Switched Network (PSN) traffic by competing private satellite systems; *on recon.*, 61 RR 649 (1986); *further recon.*, 1 FCC 2d 439 (1986) ("*Separate Satellite Systems Decision*").

<sup>7</sup> See *Comsat Corporation*, Order and Notice of Proposed Rulemaking, 13 FCC Rcd 14083 (1998) ("*Comsat Non-Dominant Order and NPRM*").

<sup>8</sup> 1999 Assembly Decision, AP 24-24-3E Final

<sup>9</sup> See *Direct Access to the INTELSAT System*, IB Docket No. 98-192, Report and Order, 15 FCC Rcd. 15,703 (rel. September 15, 1999) ("*Direct Access Order*") (permitting U.S. customers to contract directly with INTELSAT for space segment capacity).

<sup>10</sup> See 47 U.S.C. § 765(b); Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. No. 106-180. The ORBIT Act adds Title VI to the Satellite Act, entitled "Communications Competition and Privatization."

<sup>11</sup> *Id.*

<sup>12</sup> See 47 U.S.C. § 765(a).

the ORBIT Act required the Commission to determine whether users or providers of telecommunications services have sufficient opportunity to access INTELSAT space segment capacity directly to meet their service or capacity requirements.” In 2000, the Commission commenced the current proceeding in compliance with Section 641(b).

5. On September 14, 2000, the Commission released its *INTELSAT Capacity Order* finding that, despite the legal ability to directly access INTELSAT services, users and service providers did not have “sufficient opportunity” for direct access “to meet their service or capacity requirements.”<sup>14</sup> Specifically, the Commission found that U.S. users and providers of telecommunications services did not, at the time of the Report and Order, have sufficient opportunity to access INTELSAT capacity directly to meet their service or capacity requirements because: (1) Comsat controlled a significant majority of useful capacity accessible from the United States, and (2) Comsat had rights as a result of its status as an INTELSAT Signatory that would allow it to continue to control its capacity for so long as it so chose.” To facilitate meaningful opportunities for direct access, the Commission required Comsat and direct access customers to negotiate in good faith to find commercial solutions, and stated that it would consider other “appropriate action” if it found that commercial solutions did not create a sufficient opportunity for direct access users and service providers to meet their service or capacity requirements.<sup>16</sup>

6. On March 13, 2001, Comsat submitted a report describing the results of these negotiations.<sup>17</sup> In its report, Comsat stated that it had reached a commercial agreement with one carrier, WorldCom, and was continuing to negotiate with Sprint and British Telecommunications (“BT”). Comsat also maintained that direct access opportunities were increasing for those who wanted them. Based upon these negotiations Comsat asked that the proceeding be terminated.

7. On April 6, 2001, the Commission placed Comsat’s report on public notice, including Comsat’s request to terminate the proceeding.” BT and Sprint filed comments opposing termination, since they were still engaged in commercial negotiations with Comsat.” In the ensuing months, Commission staff met with Comsat, BT, and Sprint on a number of occasions to discuss the progress of these negotiations. The parties continued to file comments in the proceeding detailing the status of the negotiations. Since October 2001, the Commission has not received any further comments in this proceeding.

8. In July, 2001, the intergovernmental organization, INTELSAT privatized, with the resulting privatized company called, Intelsat Ltd., and as a result, INTELSAT ceased to exist. As a

<sup>13</sup> See U.S.C. § 765(b); see also *Availability of INTELSAT Space Segment Capacity to Users and Service Providers Seeking to Access INTELSAT Directly*, Notice of Proposed Rulemaking, IB Docket No. 00-91, FCC 00-186, 15 FCC Rcd 10,606 (rel. May 24, 2000) (“*INTELSAT Capacity NPRM*”).

<sup>14</sup> *In the Matter of the Availability of INTELSAT Space Segment Capacity to Users and Service Providers Seeking to Access INTELSAT Directly*, Report and Order, IB Docket No. 00-91, FCC 00-340, 15 FCC Rcd. 19,160 (rel. September 19, 2000) (“*INTELSAT Capacity Order*”).

<sup>15</sup> *Id.* at para. 34

<sup>16</sup> *Id.*

<sup>17</sup> See Lockheed Martin Global Telecommunications March 13, 2001 Report to the Commission on Availability of INTELSAT Space Segment Capacity to Users and Service Providers Seeking to Access INTELSAT Directly (IB Docket No. 00-91).

<sup>18</sup> Public Notice, Report No. SPB-166, April 6, 2001

<sup>19</sup> See Letter from Sheba Chako, Counsel, British Telecommunications plc., to Magalie Roman Salas, Secretary, FCC. (filed April 23, 2001). See also Letter from Robert C. McDonald, Senior Attorney, Sprint Communications to Magalie Roman Salas, Secretary, FCC, (filed April 23, 2001).

private company, Intelsat Ltd. does not have the special privileges and immunities INTELSAT enjoyed as an intergovernmental organization. Once privatized, Intelsat Ltd. became a United States licensee, and is therefore subject to all U.S. laws and FCC rules and regulations. Intelsat, Ltd., the privatized successor to INTELSAT, continues to be an important provider of satellite services for commercial and Federal government use.

9. In the *Assignment Order*, the International Bureau approved the assignment of earth station licenses, private land mobile radio licenses, and international section 214 authorizations, from Comsat Corporation and Comsat Digital Teleport, Inc., to subsidiaries of Intelsat Ltd.<sup>20</sup> As stated in the *Assignment Order*, upon consummation of the transaction, the parties will immediately terminate existing capacity agreements for capacity not already sold by Comsat to its customers.” Also, Intelsat Ltd. capacity committed to Comsat that becomes available upon the expiration of contracts with Comsat’s customers will be accessible for new business in a commercial pool of Intelsat Ltd. capacity once those contracts expire.” Furthermore, on a going forward basis, Comsat’s current customers will have the same opportunity to renegotiate existing capacity contracts or obtain new capacity as other similarly situated Intelsat, Ltd. customers.

### III. DISCUSSION

10. Since the passage of the ORBIT Act, the Commission has been diligent in pursuing all of its responsibilities under that Act. Section 641(b) of the ORBIT Act required three things: 1) a rulemaking proceeding to determine whether sufficient opportunity to access INTELSAT capacity existed, 2) appropriate action, should the Commission find in the rulemaking that such opportunity did not exist, and 3) such steps as may be necessary to prevent the circumvention of the intent of the section.<sup>23</sup> The Commission undertook the rulemaking proceeding.” The conclusion from that proceeding was that there was not sufficient opportunity for users or providers of telecommunications services to access INTELSAT capacity at that time.<sup>25</sup> The Commission determined that appropriate action at that time was to encourage commercial solutions between Comsat and any interested customers it had contracted with for access to INTELSAT capacity.<sup>26</sup> Finally, the Commission’s monitoring of the progress of the negotiations as well as its involvement in INTELSAT’s privatization process acted to ensure that the intent of Section 641(b) was not circumvented. Thus, the Commission has been thorough in following its requirements under Section 641(b).

11. Although the Commission has followed an appropriate course of action in implementing Section 641(b), recent events have caused a change in the commercial and regulatory landscape going directly to the original intent and purpose of Section 641(b) that make any further actions by the Commission unnecessary in this proceeding. Section 641(b) of the ORBIT Act was intended to address possible market/economic problems in a specific, historical commercial environment. In that environment it was feared that it was possible, despite the authorization of direct access, that Comsat might still be able to exercise its market power as the U.S. INTELSAT Signatory to maintain effective control of access to INTELSAT capacity, leaving users no meaningful ability to negotiate directly with

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<sup>20</sup> See generally *Assignment Order*

<sup>21</sup> *Id.* at para. 30

<sup>22</sup> *Id.*

<sup>23</sup> See U.S.C. 47 § 765(b)

<sup>24</sup> See generally *INTELSAT Capacity NPRM*, 15 FCC Rcd 10,606

<sup>25</sup> See *INTELSAT Capacity Order*, 15 FCC Rcd. 19,160.

<sup>26</sup> *Id.*

## MTELSAT for INTELSAT services

12. With INTELSAT's privatization, and now Intelsat Ltd.'s purchase of Comsat, there will be a new commercial environment for U.S. users seeking access to Intelsat Ltd.'s capacity. Providing the sale goes through as presented to the Commission, under the new commercial environment, there will no longer be a separate entity (i.e., Comsat) with the ability to control a significant majority of access to existing and future Intelsat Ltd. capacity in the United States. In fact, the existing Comsat contracts will be assigned to an Intelsat Ltd. subsidiary, bringing Intelsat Ltd. into direct privity of contract with U.S. customers. Therefore, on a going forward basis, customers will be able to renegotiate their existing contracts directly with Intelsat Ltd. In sum, in the post-Comsat era, Intelsat Ltd. and its customers will have a more traditional commercial relationship that we believe, will provide customers an enhanced opportunity to acquire capacity needs from Intelsat Ltd. directly on an appropriate commercial basis. Thus, with the acquisition of Comsat, it is clear that the operative facts that led to Section 641(b)'s command to initiate this proceeding no longer apply. In light of these substantially changed circumstances, the Commission is justified in terminating this proceeding as moot, making it unnecessary for the Commission to pursue any further conclusions.<sup>27</sup>

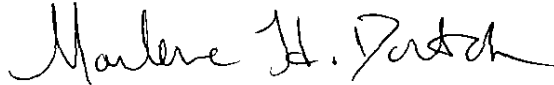
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<sup>27</sup> Terminating the proceeding does not imply any abdication of the Commission's appropriate oversight of Intelsat Ltd. Since its privatization in July, 2001, Intelsat Ltd. has been a U.S. licensee. **As** such, Intelsat Ltd. has been, and will continue after the acquisition of Comsat to be, subject to the same Commission oversight as any similarly-situated company authorized to provide services in the United States. **As** a Commission licensee, Intelsat has certain legal obligations. Should any of Intelsat Ltd.'s customers have complaints with its actions that are relevant to its role as a U.S. licensee and within the Commission's legal purview, they will be free to file complaints with the Commission.

**IV. ORDERING CLAUSES**

13. Accordingly, pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, 47 U.S.C. §§ 4(i) and 4(j), IT IS ORDERED that this proceeding IS TERMINATED, provided that the sale of Comsat to Intelsat Ltd. occurs as approved by the Commission.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch

Secretary